

Interstate 35 CSD/Interstate Educ Support Empl. Assn.

2007-2008
CEO: 993
SECTOR: I

IN THE MATTER OF FACTFINDING BETWEEN

INTERSTATE 35 COMMUNITY
SCHOOL DISTRICT,

PUBLIC EMPLOYER
and

EDUCATIONAL SUPPORT EMPLOYEES
ASSOCIATION/ISEA
EMPLOYEE ORGANIZATION

FACTFINDERS
RECOMMENDATION

TERRY D. LOESCHEN,
FACTFINDER

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PUBLIC EMPLOYMENT
RELATIONS BOARD

APPEARANCES

For the Employee Organization

Jim Crotty, Uniserve Director
Joann Mackin, Advocacy Specialist
Kenny Irwin, Lead Negotiator

For the Public Employer

Drew Bracken, Attorney
Bill Maske, Superintendent

JURISDICTION

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Chapter 20 of the Code of Iowa, as amended. (hereafter Act) Interstate 35 Community School District (hereafter District or Employer) and the Educational Support Employees Association/ISEA (hereafter Association) have been unable to agree on the terms of a collective bargaining agreement for the 2008-09 fiscal year through both negotiations and mediation. Due to the continuing impasse it was necessary for the parties to proceed to fact-finding. They have an independent agreement which waived the March 15 deadline for the completion of statutory impasse procedures. The undersigned Fact-finder was selected by the parties from a list supplied by the Public Employment Relations Board. The Fact-finding process is governed by Section 21 of the Act and all applicable rules of the Public Employment Relations Board. The Factfinder

is required to "make written findings of fact and recommendations for the resolution of the dispute" in accordance with Section 21 of the Act.

A hearing was held on April 11, 2008 in the District facility located at Turo, Iowa. The hearing commenced at 6:00 p.m. and concluded at approximately 9:45 p.m. At the hearing both parties stipulated for the record that prior impasse steps had been completed, the dispute was properly at the fact-finding stage, and that the Fact-finder had proper jurisdiction and authority to conduct said hearing and issue a written recommendation within the time period required by law. At the hearing the parties were provided full and equal opportunity to present oral testimony, written exhibits, and arguments in support of their respective positions on the item(s) at impasse. The hearing was tape recorded in accordance with the rules of the Public Employment Relations Board. Upon conclusion of the presentation of evidence and arguments, the record was closed. The parties were in agreement that the sole impasse item for determination and recommendation is that of a total package percent increase in funds allocated to the bargaining unit. Historically the parties have for many years negotiated a total package increase based on a specific percentage, and the bargaining unit has then been free to allocate that increase in funds within the unit as it determined appropriate. The parties mutually stipulated that the undersigned Fact-finder was not required to make any recommendation as to how increase in funds was to be allocated within the bargaining unit, but should limit the Fact-finding recommendation to a total package percent increase. This stipulation was consistent with the final fact-finding proposals of the parties. The Association proposal states: "The Association proposes a total package increase of 5.50% for the 2008-09 contract year." The District's proposal is as follows: "The Interstate 35 Community School District Board of Directors submits this offer of a 4.0% total package settlement to the Interstate 35 Educational Support Employees Association."

After a review of the exhibits and tape recorded testimony along with the arguments of the parties, the recommendation made herein is based solely upon the record presented to the Fact-finder with careful regard for the criteria referenced below. The undersigned Fact-finder has only exercised such authority in this recommendation as

is permitted by the requirements of the Act and relevant rules of the Public Employment Relations Board.

STATUTORY CRITERIA

The Act does not set forth any explicit criteria by which a Factfinder is to determine the reasonableness of the parties' proposals when formulating factfinding recommendations. The Act does, however, contain the criteria to be considered by interest arbitrators in the formulation of arbitration awards when parties resolve contract disputes by impasse arbitration. It has been generally recognized since the inception of the Act and has become a long standing practice that Fact-finders will analyze evidence and formulate recommendations based upon the statutory criteria for arbitration awards contained in Section 22.9 of the Act. That Section provides as follows:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hour and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Moreover Section 17.6 of the Act provides:

No collective bargaining agreement or arbitrators' decision shall be valid or Enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the Public employer.

The present Fact-finder has long adhered to the above described custom and practice. It is illogical to think that the legislature would provide explicit criteria for interest arbitration and intend for fact-finders to apply some other unknown factors. This

is particularly true when one considers that a rejection of a Fact-finding recommendation by either side results in an impasse arbitration where the statutory criteria are mandated standards of arbitration review.

The recommendation contained in this report has been made with due regard for the above statutory criteria. The Fact-finder has reviewed all of the statements, exhibits and arguments of the parties in detail. However, because the District specifically stated at the hearing it did not claim an inability to fund the proposals presented here, ability to pay was not a primary factor in the recommendation made below.

BACKGROUND

Interstate 35 Community School District is located in south-central Iowa. The District covers approximately 192 square miles and includes three communities of New Virginia, St. Charles and Truro. The education facilities and administrative offices are located in Truro. Interstate 35 runs North and South through the center of the District, providing the basis for the District's name.

The population base within the District is approximately 4088 persons. Its enrollment is approximately 901 students. It provides a pre-kindergarten through 12th grade education for its students on its only campus located in Truro, Iowa. The campus is approximately 30 miles south of Des Moines, Iowa. While near the capitol city, the District is nonetheless rural in nature.

The District is governed by a five member Board of Directors. Its total employment includes 4 administrators, 69 teachers and 56 support personnel.

The I-35 Educational Support Employees Association/ISEA is the certified bargaining agent for both full time and regular part time employees who occupy 47.63 positions in the District. Those job classifications include secretaries, teacher associates, custodians, bus and shuttle drivers and food service.

The bargaining unit is what is commonly called a "wall to wall" unit because of a variety of positions being represented by one certified organization. The positions within the bargaining unit are financed by the District from its general fund, special education funds and its lunch fund.

According to the Association's Advocate, the parties first engaged in bargaining in 1999 for a 2001-02 collective bargaining agreement. While the parties have proceeded to fact-finding in prior years, they have never reached the point of an impasse arbitration hearing.

The parties first met to bargain a 2008-09 contract on January 31, 2008. Other bargaining sessions followed. The Association declared impasse under the Act and a mediator was appointed by the Public Employment Relations Board. A mediation session on March 6, 2008 was unable to resolve the impasse. The parties have now proceeded to fact-finding with one item at impasse.

IMPASSE ITEM

The sole item to be resolved at impasse is a total package percentage increase. As was stated previously the parties stipulated the present Fact-finder is not required to allocate the dollar amount of an increase within the bargaining, but only to recommend the total package percent. Historically the unit has spread the final amount of any increase among salaries, fringes and job classification, etc. at its discretion.

The District proposes a total package increase for a 2008-09 contract of 4.0%.

The Association's proposed total package increase for the 2008-09 contract year is 5.5%. The Association argues that its proposal is supported by the bargaining history of the parties.

The District contends that the bargaining history relied upon by the Association may be somewhat misleading. It argues that its enrollment from 1997-98 to present is best described as relatively modest increases or decreases. The glaring exception was the 2005-06 fiscal year when enrollment increased by 87 students. The District claims that this was a unique one time circumstance and that there is little likelihood that such a substantial increase will occur again. It points out that enrollment decreased by 15 students for the 2007-08 year. (See District Exhibit 2) There is a real possibility that the decline may continue for the 2008-09 school year. The District argues that while the period between 2001 and 2004 should have been a period of real financial growth for the District, there was not sufficient financial support from the State of Iowa and the District

was spending at a rate in excess of its revenues. Over fiscal years 2001 to 2006 general fund spending often exceeded general fund revenue. (See District Exhibit 17)

Further, the District argues that it can encounter future budgetary problems if appropriate steps are not taken to protect existing balances and if certain funds are exhausted. In its Exhibit 18 it contends that the District had strong balances in 2000, but in 2001 the state experienced a significant economic downturn. As a result, allowable growth was reduced from 4% to 1.5%. In following years the District did not slow down its spending to match the slow down in revenue and was headed for a serious budget deficit. This deficit was avoided only by the unprecedented enrollment increase of 84.7 students for fiscal year 2005-06. That unique increase combined with the financial adjustments shown in District Exhibit 19 avoided the potential budget deficit. The District contends that an economic downturn has occurred again, but the present situation is combined with a questionable enrollment. The District can deal with these circumstances if the District can slow down spending to match current economic conditions. Therefore the historical percentages relied upon by the Association can no longer be maintained. The slow down in spending must include spending associated with negotiated agreements. The District concludes that bargaining history criteria have less value when balanced against current economic factors. Therefore its 4.0% final offer is fair, reasonable and should not be rejected because of a bargaining history not consistent with current economic conditions.

There are significant differences between the parties with respect to comparability groups. The association selected "wall to wall" units in Districts with enrollments of less than 1800 students and within a 60 mile radius. (See Association Exhibit C-1) Association Exhibit C-2 shows the geographic proximity of the selected comparables to Interstate 35.

The District opted for three comparability groups. Its first selected comparison group was the athletic conference, "Pride of Iowa Schools." (See District Exhibits 34-37) It also selected contiguous school districts that border the Interstate 35 District. (See District Exhibits 38-42) It does emphasize, however, that Indianola, which is substantially larger in size and economic base, does not present a fair comparison. Last, if offered a comparison group of employers in the private sector located in Clarke,

Madison and Warren Counties. These various private employers range from a care center, an area hospital, an area college, day care centers, to three cities of Indianola, Osceola and Winterset. (See District Exhibits 43-46)

The Association claims that the athletic conference does not provide valid comparability because only two of those school districts bargain collectively. Further, the Association claims that only one of the District's selected contiguous districts has organized bargaining. The Association also contends that no valid comparison may be made with the private sector employers presented by the District. There is nothing in the record to indicate whether or not any of the private sector employers have any organized bargaining.

It should be noted at this point by the undersigned Fact-finder that the area college and the three cities selected by the District for comparability purposes are public employers. Regardless of the uncertainty of their bargaining status, the present Fact-finder both finds and concludes that little may be gained in the present controversy by comparison with those entities, none of whom are a PK-12 school district.

The Association argues that there can only be valid comparability by comparing the present District to other school districts which have organized bargaining. There is no valid comparison with groups of employees which meet and confer with their employer as to wages, hours, etc.

The District vehemently argues that the statutory criteria for interest arbitration does not contain any reference to employees "certified" to bargain or to "organized bargaining." It maintains that the statute only requires a comparison of the "involved public employees" with "other public employees doing comparable work." There is no mention of being certified to bargain or subject to organized collective bargaining.

The foregoing comparability dispute between the parties really goes to the degree of comparability or more generally stated, the quality of the comparability group. The District's argument overlooks is the fact that the statute in question goes on to provide that consideration shall be given to factors peculiar to the area. Organized bargaining may be a factor. The District's argument also overlooks the initial language which states: "The panel of arbitrators shall consider, in addition to any other relevant factors the following factors:" (Emphasis added) Certainly the existence of organized bargaining

under the Act is both a relevant factor and a factor peculiar to the area. Although not an absolute, it can be said with a reasonable degree of certainty that in public sector labor relations those employees who have organized to bargain collectively under the Act have achieved a different level of wages and benefits than those who have opted to meet and confer either collectively or individually. While the present Fact-finder has considered all of the comparable entities presented by both parties, I nonetheless find that organized bargaining units present a more valid comparison with the present involved employees. For example, comparing a school district secretary's conditions of employment with that of a city secretary is of limited value. While job duties may be similar, the finances of a school district and a city are substantially dissimilar.

Association Exhibit C-4 does not present a comparability group but purports to show known settlements for support staff units across the state. The total package percent average for 20 units is 4.94%. Only 4 of the 20 exceed 5.5%. Including those four, there are a total of 7 above 5%. Only two are below 4%, with all others higher than 4%. Only one of the schools in the Association proposed comparability group appears on the list of known settlements in Association Exhibit C-4.

The Association asserts the District has the ability to fund a 5.5% increase without adverse financial impact. The cost difference between the Association's fact-finding position and the District's fact-finding position is \$14,122.00. The District will receive a 2.35% regular program increase for fiscal 2008-09. This will generate new money of \$114,754.90. The District does not dispute that projected increase in funding. (See District Exhibit 13)

The Association claims that the District's 2006-07 unspent balance (unused spending authority) of \$1,114,877.00 was the largest unspent balance in the District's history. At the end of the 2005-06 fiscal year, the District's budgetary fund balance was \$719,866.00. The Association argues that the District's regular program increase is better than 54% of the state's school districts. In the event of shortfalls in funding the District can utilize the cash reserve levy if it should choose to do so. The fact that some bargaining unit employees are paid from special education funds and nutrition funds lessens the impact on the regular program budget. Further, the regular program is only a

portion of the general fund budget. The Association claims its proposed percentage increase is well within the Districts' ability to pay.

The District agrees that its 4% allowable growth results in \$114,754.90 new money for the 2008-09 school year. This amount represents a 2.35% increase in funds. (See District Exhibit 13) However, the District expresses concern that there has been a decline in the 2007-08 enrollment of 14.5 students. This results in a \$77,328.50 loss to the District. In addition, discontinuance of the instructional support levy will cause a loss of \$73,949.00. To offset this loss the Board of Directors is considering an increase in dropout allowable growth funds.

The District is projecting a decrease in the unspent authorized budget to \$956,718.80 in fiscal 2008-09. (See District Exhibit 14) The District asserts there is a need for prudent fiscal management. During prior fiscal years, spending frequently exceeded the District's general fund revenues. A financial crisis was avoided by a unique increase in enrollment of 84.7 students in fiscal year 2005-06. This enrollment growth resulted in a significant increase in state funds. This funding increase coupled with various cost savings measures (see District Exhibit 19) allowed the District to stabilize its financial operation. The District has concern that there now may be a continued decline in its enrollment. It strongly argues that the 84 student increase which occurred in 2005-06 was a "one time event," not likely to be repeated. The District also argues that while miscellaneous funds are part of the District's budget, these funds are frequently earmarked for special purposes. For example, in fiscal year 2008 the District will receive \$43,374.00 in teacher quality funds. While this money goes into the budget, it comes right back out to teachers. It cannot be used for other purposes. Thus the budget is not made larger for other operational costs facing the District. Miscellaneous revenue is extremely difficult to project. The District also points out that it has incurred a special education deficit 5 out of 8 years, including the last four fiscal years. A recovery from this deficit can result in an additional tax on citizens. (See District Exhibit 23)

The District contends that its insurance benefits offset any negative salary or wage comparisons. In comparison with its athletic conference schools, the District claims that no "Pride of Iowa Conference" school comes even close to providing the quality and quantity of insurance benefits as does Interstate 35. (See District Exhibits 36 and 37) It

argues the same is true with respect to contiguous districts. (See District Exhibits 38 and 41) District Exhibit 56 equates the insurance benefits enjoyed by the unit with dollars per hour. For example, it argues that a 197 day secretary earning \$8.10 per hour is really earning \$11.94 per hour by reason of an insurance equivalent of \$3.84 per hour.

Most important is the fact that there will not be any insurance cost increase for the next fiscal year. Stated another way, the insurance cost increase is 0. Therefore, the District argues that because its 4% final offer will not have to be allocated to any increased insurance cost, its offer yields greater gains in salary than any settlement prior to fiscal year 2008-09. In other words, with a 4.0% increase the unit is receiving more money for salary than ever before. Therefore, the District's 4% offer is fair and reasonable.

While salaries and benefits make up the greatest share of a school budget, the District asserts that there are other necessary expenses which impact the general fund budget such as equipment, supplies, maintenance and fuel costs. These expenses are likely to increase, particularly fuel. Its 4% offer is reasonable in view of the potentials for a decrease in income and an increase in operating expenses.

The District is concerned that state funding is slowing down. It cannot establish a pattern of spending more than comes in. In all probability the District's budget has peaked. The District must follow a course of prudent fiscal management. It contends its offer is reasonable because all the total percentage increase can be applied to salaries.

After an exhaustive review of the taped evidence, arguments and all exhibits, the selected Fact-finder finds and concludes that the most reasonable recommendation which is accordant with the statutory criteria is a total package percent increase of 5.0%. The Fact-finder is very aware that this recommendation is a "split" between the final offers of the parties, and that it is not uncommon that both sides dislike a fact-finding result which splits the difference. However, in the present case this recommendation is the most consistent with the factors set out in Section 20.22 (9) of the Act.

The bargaining history of the parties is undisputed that the unit received a percentage increase greater than 5% in five of the last seven years. In 2004-05 the increase was 4.86%, and the low occurred in 2006-07 with 4.0%. The seven year average

is 5.09%. Thus the current recommendation, while slightly less than the average, is consistent with the history established between the parties.

The present recommendation also compares favorably with the criteria of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. After giving consideration to the comparability groups proposed by both parties, the undersigned finds that the group proposed by the Association presents employees in classifications more similarly situated with the current unit. This is due to the existence of organized bargaining within the Association comparability group. I am mindful of the District's argument that the language of the statute does not refer to any organized bargaining criteria, but the fact remains that districts with certified bargaining organizations present a better comparison than districts which meet and confer with employees. Regardless of that analysis, the present Fact-finder also compared the present unit to the school districts offered by the District for comparison. A comparison to private sector employers is of limited value in formulating a final recommendation.

Unfortunately, neither side was able to present any substantial evidence with respect to current 2008-09 settlements in their selected comparable school districts. But a comparison of current wages in the various job classifications indicates that, except for drivers, the I-35 Unit falls a little below the average wage in the other school districts. Again, I am not unmindful of the District's claim that its insurance package offsets a lower wage. However, a 5.0% recommendation allows the unit to at least maintain its relative position with respect to other school district wage rates.

While the District's insurance argument has validity, the fact remains that the parties have bargained a total package concept for years. Significant insurance benefits are a part of the bargaining history. If the cost of insurance had increased for the 2008-09 fiscal year, the parties would still be left with the question of the total percent increase and not how the unit would allocate any agreed increase. Consideration has been given to the District's contention that one can not just look at the hourly wage, but must also consider the value of the insurance benefits. This factor is accounted for in a 5.0% percentage increase.

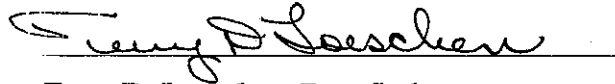
The recommended 5.0% increase is commensurate with statewide known settlements. While only one of all of the proposed comparable districts presented by both parties is included in the statewide settlement average, that average is nonetheless relevant to a determination in the present case. The state average for known support staff contract settlements is 4.94%. The Fact-finder recommendation of 5.0% is obviously consistent with that average.

One only needs to turn on a television or pick up a newspaper to know that economic problems exist nationwide. To a limited extent a 5.0% recommendation may provide some assistance to employees to defray the impact of an economic recession. This, of course, must be balanced against the interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services. In the present case the District can afford a 5.0% increase. There is little to no adverse effect on the public, nor is there any appreciable adverse effect on the normal standard of services. Assuming the accuracy of District Exhibit 50 showing a 1.0% support staff increase to cost \$9,360.49, a .5% increase should cost on half that amount or \$4860.25. Under the Fact-finder recommendation, the dollar amount of difference between the parties should reduce by \$4860.52. Even when balanced against the District's desire for prudent fiscal management the recommendation does not cause a significant adverse effect on the District's finances for 2008-09. The recommendation is consistent with the District's financial situation.

RECOMMENDATION

The undersigned selected Fact-finder recommends a total package percentage increase for the I-35 Educational Support Staff Employees Association bargaining unit of 5.0% for fiscal year 2008-09.

Dated this 25th day of April, 2008.

A handwritten signature in cursive script, reading "Terry D. Loeschen", is written over a horizontal line.

Terry D. Loeschen, Fact-finder

CERTIFICATE OF SERVICE

I certify that on the 25th day of April, 2008, I served the foregoing Report of Fact Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mr. Drew Bracken
100 Court Avenue, Suite 600
Des Moines, Iowa 50309

Mr. Jim Crotty
777 Third Street
Des Moines, Iowa 50309

I further certify that on the 25th day of April, 2008, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.


Terry D. Loeschen, Fact-Finder